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Matthew Taylor
Head of Review of Employment Practices in the Modern Economy
Department for Business, Energy and Industrial Strategy

Sent by email to
modernemploymentreview@beis.gov.uk

Dear Matthew,

Response to Review of Employment Practices in the Modern Economy

I am responding to the review as the Economy Spokesperson for the London Assembly Labour Group.

I welcome the Independent Review of Employment Practices in the Modern Economy to assess how employment practices must adapt to keep pace with evolving modern business models. Without action, we are likely to see increasing inequality in London and the rest of the UK. The review is particularly timely now that Article 50 to leave the European Union (EU) has been triggered and concerns have arisen over working conditions, skills and costs to businesses. It is important for the review to make recommendations for the next Government to ensure we have an economy that works for everyone and that Britain does not fall behind our European neighbours with regards to working conditions and rights.

Security, pay and rights

London's employment rate is almost at a record high at 73.4 per cent and the number of workforce jobs in London reached 5.73 million in the last quarter of 2016.[1] However, these figures do not reflect the human element and complexities of London's labour market.

Almost one in five (18 per cent) of Londoners are on low pay with this figure expected to rise over the coming year due to the lack of wage growth. Recent research undertaken by the Institute for Fiscal Studies (IFS) show that Britain is in the midst of the weakest growth in living standards in 60 years. The IFS say that low income families faring the worst and forecast that average earnings will be no higher in 2022 than they were in 2007. Simply speaking, this means that many workers are not expected to receive a pay rise in fifteen years. Combined with the increase in inflation and rising costs of trade following the uncertainty surrounding Brexit, basic necessities will extend further out of the reach of many Londoners.

[1] London Datastore, (12 Apr 2017), Labour market update for London – April 2017, date accessed 08.05.2017

London already has a high cost of living and 27 per cent of Londoners live in poverty after housing costs are taken into account, the majority of whom are in a working family.[2] Loughborough University's recent research into a Minimum Income Standard for London shows that 41 per cent of Londoners cannot afford a decent standard of living and it costs between 18 per cent and 56 per cent more for households to reach decent living standard in London compared to rest of UK.[3] Trussell Trust figures highlight the extent of poverty in London and figures show that Trussell Trust food bank usage in London has increased 836 per cent in five years from 11,866 in 2011-12 to 111,101 in 2016-17.[4] The two biggest reasons people give for using a food bank are low wages and benefit delays. It should be noted that these figures are just from the Trussell Trust food banks and there are many more independent food banks in London serving local communities so, the number of Londoner using food banks is higher.

Latest figures from the Greater London Authority (GLA) show that 796,000 Londoners aged 18 and over are not paid the London Living Wage[5] – this amounts to 796,000 Londoners not earning what is considered enough to purchase the essentials needed to get by.[6] The National Living Wage, a misleading renaming of the National Minimum Wage (NMW) of £7.50 per hour falls £2.25 per hour short of an actual living wage and is not applicable to those aged under 25 or apprentices under 19 or in their first year.

The London Assembly Labour Group would like to see this review endorse a fair day's pay for a far day's work for everyone, including apprentices and people aged under 25, by ensuring that a truly London Living Wage becomes the norm. The London Living Wage could be a route out of poverty for many Londoners whereas the National Living Wage is not. In addition, we would like to see the Government go further in their enforcement of National Minimum Wage legislation. As recommended in the London Assembly Economy Committee report, London Assembly Economy Committee, *EU exit: workers' rights and the London labour market*, we would like to see this review to recommend devolving enforcement to local authorities.[7]

The high employment rate also masks the increasingly precarious nature of employment. The emerging "gig-economy" has been responsible for the rise in self-employment, zero hour contracts and underemployment due to part-time or low-hour contracts. We would like this review to recommend a statutory definition of self-employment to clarify the status and rights of workers.

Self-employment is rising in the UK and London has the highest rate of self-employment of all UK regions, with the self-employed accounting for 18 per cent of all workers.[8] Whilst self-employment provides the flexibility that many workers want, the Social Market Foundation (SMF) found that the self-employed are more likely to receive low pay than employees, and that the gap is set to widen as the National Living Wage rises over time and as Universal Credit is rolled out. The SMF estimate that around 67 per cent of self-employed Londoners earned less than the equivalent of a full-time

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[2] Trust for London: London's Poverty Profile, Key facts, date accessed 08.05.2017
[3] Loughborough University, (Mar 2017), Minimum Income Standard (MIS) for London, date accessed 08.05.2017
[4] Trussell Trust, (25 Apr 2017), End of Year Stats, date accessed 08.05.2017
[5] Greater London Authority, (16 Nov 2016), MQ 2016/4477 Pay (2) by Fiona Twycross, date accessed 08.05.2017
[6] Living Wage Foundation, What is the real Living Wage?, date accessed 08.05.2017
[7] Andy Hull, (2 Dec 2013), Centre for London, Settle for Nothing Less: Enhancing National Minimum Wage Compliance and Enforcement
[8] The Social Market Foundation, (18 Oct 2016), Tough Gig: Tackling low paid self-employment in London & the UK Final report, pg. 20

employee on the LLW.[9] Furthermore, 77 per cent of those earning less than the London Living Wage have no other sources of income aside from employment earnings compared to only 36 per cent of low paid employees. This is of particular concern in London as the high cost of living is likely to make it difficult to manage the volatility of earnings from self-employment.[10] According to SMF estimates, 1.73 million workers will continue to be paid below the National Living Wage because it does not cover the self-employed.[11]

Not only are many self-employed Londoners at a disadvantage when it comes to pay, particularly as they are not subject to the NMW, they are also not entitled to some of the same rights as employees, such as holiday and sick pay. They also lack training opportunities that employees would receive which hinders their ability to increase their skill set and further their business.

The London Assembly Labour Group would like this report to recommend a right to the minimum wage for the self-employed. Furthermore, we would like organisations such as the Living Wage Foundation to promote the Living Wage for the self-employed to enable ethical choices. We would also like to see a scheme introduced which enables low-paid self-employed Londoners access to skills and training to ensure a thriving business which will in turn benefit the economy. The SMF suggests that this could take place in the form of vouchers to enable low-paid self-employed to access training without losing a day's wages. There are approximately 970,000 Small and Medium Enterprises (SMEs) in London which account for the vast majority of private sector business in London, making up a substantial proportion of private sector employment and turnover. London relies on entrepreneurship but low-pay versus the high cost of living and working is unlikely to encourage people to start businesses in London or indeed stay on in the capital when they could set up an office outside of London at a lower cost.

Zero-hours and low-hours contracts can provide workers with the flexibility that they require, allowing people to take on extra work when they want it or to allow those with other responsibilities to work around them. However, there are many people in zero-hour or low-hour contracts who wish to take on more hours and desire a stable income. For many, the use of zero-hour or low-hour contracts arguably benefits the employer more than the employee and there should be additional rights to prevent exploitative zero-hours contracts.

The number of Londoners on zero-hours contracts currently stands at 118,000, an increase of 23,000 in the last year.[12] For many of these workers, zero-hour or low-hour contracts can cause difficulties with low pay, under-employment, poorer employment conditions and difficulties accessing welfare benefits and housing. There are still significant difficulties for people to self-determine whether they are on a zero-hour contract or not, or in the case of private hire vehicles and couriers, whether they are defined as self-employed or not.

My report, *Zero Sum Game: zero hours contracts in London*, found that 75 per cent of zero-hours workers in Greater London are paid less than the London Living Wage.[13] Income insecurity was a major cause for concern for many people as 75 per cent of zero-hours workers reported that their working

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[9] *Ibid.*, pg. 20
[10] *Ibid.*, pg. 8
[11] The Social Market Foundation, (21 March 2016), Tough gig: Low paid self-employment in London and the UK, date accessed 08.05.2017
[12] ONS Labour Force Survey, (15 Mar 2017), Labour Force Survey: Zero-hours contracts data tables
[13] Fiona Twycross AM, (Sept 2015), Zero Sum Game: zero hours contracts in London

hours varied each week. This creates problems for budgeting and accessing credit, while the short notice employers often give makes it difficult to arrange childcare and to plan family life. This is particularly the case when it comes to accessing welfare benefits and housing for example, working tax credits for a single person can only be claimed if an individual works 16 hours a week, but an individual could exceed these hours some weeks due to the varied nature of zero-hours contracts, often leading to delayed payments and increased uncertainty and pressure on household incomes. Furthermore, landlords are less likely to take on tenants with zero-hours contracts as they can not provide a guarantee of earnings. *Zero Sum Game* recommended that employees should receive a written statement of terms and conditions which sets out in writing how many hours a week they will be expected to work. This would bring practices in line with employment agencies, which are already required to outline the expected number of hours to be worked. After a certain period of time employees should also have a contracted guaranteed minimum number of hours based on how many hours they have regularly been working. The only exception should be where the individual actively – and genuinely - requests to remain on a zero-hours contract.

The London Assembly Labour Group would like to see this review to call for a tightening of the laws surrounding employment contracts and status. Whilst the Government have provided a definition and taken steps to prevent the use of exclusivity clauses, it should now go further and ensure workers on zero-hours contracts have the same rights and protections as employees.

The Government should do more to ensure that employees are aware of their rights and their terms of employment, particularly when it comes to zero-hours contracts. Barriers to justice also need to be removed, for example, by reversing the government decision to impose fees on employment tribunals that prevent many people, particularly people on low incomes, from taking forward cases and pursuing their legal rights.

Despite the previous Government commitment to implement existing EU laws into UK legislation by way of the Great Repeal Bill, a great deal of uncertainty remains. The EU has contributed much to workers' rights in the UK and has provided a minimum standard for rights in the UK. Not only this, the EU has provided a level of consistency to both employers and employees. Once the UK is out of the EU, this standard may no longer apply and there is a risk that workers' rights will start to fall behind the rest of Europe or, worse still, protections will be removed.

At an evidence gathering session at the London Assembly Economy Committee,[14] the Trades Union Congress (TUC) stated that the EU provides important employment protections, safeguard health and safety, and promotes equality in the workplace. For example, the introduction of the 1993 Working Time Directive entitlement for all workers to receive a minimum of 20 days paid annual holiday benefitted an estimated two million workers for the first time. There have been improved protections for expectant and new mothers, including the right to paid time off to attend antenatal appointments following the introduction of the Pregnancy Workers' Directive. Furthermore the EU Framework Equal Treatment Directive 2000 extended the scope for anti-discrimination rights to be considered on the grounds of age, religion or belief and sexual orientation; while the Health and Safety Framework Directive, established obligations for employers to evaluate, avoid and reduce workplace risks.

The London Assembly Labour Group recommends that this review should call for UK workers' rights to keep pace with or exceed those in the EU. Not only will this benefit workers in the UK, but for example Health and Safety regulations being kept up to date will benefit businesses who wish to trade

[14] London Assembly Economy Committee, (Feb 2017), EU exit: workers' rights and the London labour market

with the EU. We oppose any watering down of existing and hard won rights and protections. Workers' rights need to be updated to keep up with the changing economy and digital revolution to ensure they are fit for purpose. The panel should note the recent short report published by the London Assembly's Economy Committee, *EU exit: workers' rights and the London labour market*, February 2017 which has recommendations on workers' rights and low-pay following Brexit.[15]

Progression and training

Ensuring that London has the skills required to keep the economy thriving is vital. London is a high skilled economy but evidence gathered by the London Assembly's Economy Committee has found that businesses are struggling to recruit people with the skills that they require and their concerns have grown since the EU referendum. The economy is further changing with the growth in automation, artificial intelligence (A.I.) and driverless vehicles which are likely to mean that we are going to need a much different skill set in the near future. In London, we now have a Mayor focused on improving skills provision in the Capital who has introduced a Skills for Londoners Taskforce to address these issues. One of the biggest barriers that employers face is recruiting the skills they need and we believe that good careers advice and guidance will be a good place to begin to tackle this.

The 2011 Education Act placed the duty of independent and impartial careers guidance for pupils over the age of 13 with schools. Connexions, a government funded agency was cut back to become solely a phone and online service without the face to face careers guidance which provides the greatest benefit to young people.[16] Since the rolling back of Connexions, evidence complied by Ofsted found that schools do not always provide comprehensive information about all options available.[17] Moreover, Ofsted found that the National Careers Service is not well promoted in schools and does not focus sufficiently on supporting young people up to the age of 18.[18] Schools are likely to rely on informal advice-givers such as non-specialist staff who do not necessarily have the information, understanding or qualifications needed to provide adequate careers guidance.[19] Provision worsens in schools for those who do not wish to progress the academic route. Young people are not receiving equal and clear guidance when it comes to deciding their future career pathway.

The Mayor of London has recently launched Skills for Londoners, to ensure all Londoners have the opportunity to train in the skills London's economy needs. The initiative aims to work with businesses to create new high quality apprenticeships and other training opportunities and to ensure colleges and other skills provider's offers meet the needs of Londoners. However, the Government should ensure London has the funding and control to meet its skills needs.[20] This will build on the previous Mayor's London Ambitions Careers Offer launched in June 2015 which intended to establish a coherent framework to apply to all young people, regardless of the particular school or college they attend.[21] The Mayor is calling for a strategic, coherent all-age careers offer, building on the young people's framework developed through London Ambitions as part of his wider skills devolution ask. The

[15] London Assembly Economy Committee, (Feb 2017), EU exit: workers' rights and the London labour market
[16] The Guardian, (23.01.2013), Careers advice reforms led to worrying deterioration in standards, say MPs, date accessed 10.05.2017
[17] The Guardian, (10.09.2013), *Career advice in schools is failing pupils, Ofsted warns*, date accessed 10.05.2017
[18] Ofsted report, (September 2013), *Going in the right direction? Careers guidance in schools from September 2012*, p. 6
[19] London Councils, (Oct 2012), Written evidence to the House of Commons Education Committee
[20] Greater London Authority, Skills for Londoners, date accessed 10.05.2017
[21] London Enterprise Panel, London Ambitions Careers Offer, date accessed 10.05.2017

London Assembly Labour Group support this offer to serve all Londoners, including those who are under-employed or who may wish to change their career.[22]

Despite this, there is still currently no provision in place to provide young Londoners with independent and equal access to face-to-face careers advice, particularly important for young people from less privileged backgrounds, with learning difficulties or disabilities who rely heavily on this guidance.[23] The London Assembly Labour Group would like to see more attention given to implementing independent careers advice and guidance from a young age that is face-to-face, free of stereotypes and allows young people to obtain meaningful skills for the future.

The Government have set a purely numerical target to achieve three million apprenticeship starts by 2020.[24] The policy focuses on quantity over quality. This view is supported by Sir Michael Wilshaw, Chief Inspector who in his Ofsted report said too many apprenticeships are of poor quality and fail to provide the skills and knowledge that employers need. The surge in apprenticeships has been concentrated in sectors such as customer service, retail, administration and care rather than focusing on the advanced, professional-level skills that benefit employers or the economy. While in-house training is important, it is not the same as an apprenticeship and the classification of this training for existing staff as apprentices is misleading.

My research in 2015 found that significant numbers of London's apprenticeships were going to those aged over 25 and there was a clear lack of progression into higher level apprenticeships for females, those from black and ethnic minority backgrounds (BAME) and people with disabilities. A recent investigation by the London Assembly Economy Committee looked into the severity of the lack of diversity in apprenticeships which found:

- BAME and female apprentices tend to be clustered in low level, low pay apprenticeships.
- More than a quarter of all apprentices fail to finish their training. Achievement rates are declining more quickly for BAME apprentices.
- London needs more highly skilled apprentices. In 2015-16, just 2,720 higher apprenticeships were started in London (about six per cent of all apprenticeship starts).
- London is the worst performing region for apprentices in the construction sector and in 2014 there were no women taking a higher level apprenticeship in either construction or engineering.
- Despite its growing importance to the London economy the tech sector was the second worst sector for providing apprenticeships in the capital.[25]

The London Assembly Labour group believes that the Government should focus on the quality of apprenticeships and ensuring that the UK has a highly skilled and diverse workforce instead of setting numerical targets. We support the Mayor of London's calls for a fair skills funding settlement for London and support the push for an independent careers advice service in London, which encourages young people into the right vocational training in terms of the skills gap. The Skills Funding Agency should use the data that they collect to design initiatives to increase the number of apprenticeship

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[22] Greater London Authority, (18 Jan 2017), MQ 2017/0310, Skills for Londoners by Fiona Twycross, date accessed 10.05.2017

[23] Riley, Tim, (27.06.2012), Centre for Economic and Social Inclusion, 'Careers guidance: time for a rethink?'

[24] Department for Business, Innovation and Skills, (14 June 2015), Government kick-starts plans to reach 3 million apprenticeships, date accessed 11.05.2017

[25] London Assembly Economy Committee, (Jan 2017), Apprenticeships: an un-level playing field

starts and successes, particularly focusing on combatting stereotypes and increasing access for disadvantaged groups.

We support the need for in-work training, which can be difficult to access for many workers and especially those who are self-employed. More emphasis should be placed on employers to grow their employee's skills which will not only benefit the productivity of the organisation, but will benefit the economy as a whole. This is going to be increasingly important with the rise of automation in which many job roles are expected to change, or in the case of supermarkets and the use of self-service checkouts, already have.

The balance of rights and responsibilities

Many people remain unclear about the current definitions of their employment status and their entitlements. In particular, the difference between employee and worker for those on casual contracts is particularly confusing. This was demonstrated by the recent employment tribunal against Uber which ruled that the drivers were not self-employed contractors but were workers and as such, entitled to the national minimum wage and holiday pay.

The London Assembly Labour Group would like this review to recommend the proactive enforcement of statutory entitlements such as being paid at least the NMW, protections against discrimination and holiday pay. There is a case for entitlements and definitions to be updated in light of emerging business models i.e. the 'gig-economy' and the increased use of zero hour contracts. Workers should not be penalised and have their rights removed simply because of new models of employment.

Unpaid internships remain an issue in London. They hinder social mobility as many people are excluded from gaining work experience because they cannot afford to work without pay and do not have the connections to access opportunities. This means that businesses are limiting the pool of available applications and may be missing out on the best talent. Unlike apprenticeships, internships are not directly regulated by a body or statutory scheme and lack general employment protections.[26]

The Sutton Trust estimates that one-third (31 per cent) of graduate interns are unpaid, with many more unable to take on unpaid work.[27] In addition to not being paid, most interns are unable to claim Jobseekers Allowance (JSA) as they are unavailable to accept offers of employment and attend Jobcentre Plus interviews which are conditions of receiving JSA.

Unpaid internships can also be in breach of the National Minimum Wage Act 1998 when the intern is undertaking work for the organisation that would otherwise be undertaken by a full-time member of staff.

The London Assembly Labour group would like to see this review recommend fair internships that are accessible to everyone. This would ideally include paying interns in London the London Living Wage and at the very least limiting unpaid internships to four weeks. A four week limit for unpaid internships recommended by Intern Aware would provide security, stability and opportunities available to a greater number of young people.

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[26] Intern Aware, What does the law say about unpaid internships?, date accessed 11.05.2017
[27] The Sutton Trust, (12 Nov 2014), Internship or Indenture?, date accessed 11.05.2017

Representation

Trade unions have traditionally been the main form of worker representation in the UK. While the changing nature of employment with increasing numbers of self-employed or working remotely provides a challenge for worker representation, the London Assembly Labour Group is clear that trade unions can provide strong representation for workers in emerging sectors and have been at the forefront of challenging issues in the gig economy. Workers would benefit from the government working more closely with trade unions to improve workers' rights. Furthermore, the government should take action to ensure employers have greater representation at board level. The practice of representation of workers on supervisory boards, boards of directors and similar bodies in companies is an important form of employee participation in many EU countries that we should aim to emulate. The employee representatives are usually elected by the workforce, and may be employees of the companies or officials of organisations representing those employees, or individuals considered to represent the employees' interests in some way. The presence of employee representatives in the board-level structures of a company allows the expression of employees' collective interest through the intermediary of representatives. This ensures that employees of the organisation can input into decisions that are made within the company and also provides feedback on the potential impact these decisions will have on the employees.

The Government should commit to ensuring that there is a right to worker representation on boards and provide a system of training to the representatives to ensure that they are adequately equipped to participate fully in board meetings. Additionally, the Government need to consider how representation could work for the gig-economy, particularly those workers who are part of an organisation but classed as self-employed. The Government could undertake an assessment of access to employment tribunals since fees were introduced to ensure that all workers, particularly those who are low paid and may not be receiving the NMW are able to take action when their employer is not complying with the law.

Opportunities for under-represented groups

There is much that the Government should do when it comes to creating opportunities for groups currently underrepresented in the labour market, in particular, women, the elderly, those with disabilities or care responsibilities. Evidence from the London Assembly Economy Committee in its investigation into diversity in apprenticeships found that women, BAME and people with disabilities were less likely to progress into higher level or better quality apprenticeships. However, this lack of progression can be found across the labour market with effective glass and class ceilings, the gender pay gap and low employment rates for people with disabilities.

Overall, women earn significantly less than men over their entire careers as a result of differences in caring responsibilities; clustering in low skilled and low paid work, the qualifications and skills women acquire; and outright discrimination.

The London Assembly Labour group would like to see a greater use of pay gap audits which can be helpful for organisations to identify where there may be barriers in recruiting those currently underrepresented in the labour market.

Other ways in which this could be achieved include name-blind recruiting, greater use of flexible working such as job share opportunities and to ensure that buildings are accessible and provisions are

made for people with disabilities. In the modern economy and with greater use of technology in employment, there could be further opportunities for working from home for people with caring responsibilities or disabilities which might enable them to continue working in a more suitable environment or schedule.

New business models

To assess how the gig and sharing economies are impacting on the economy, the Government should commit to collecting and publishing data regularly to measure any changes and impact. This will include data such as: the number of people and categories self-employed by region and their pay; the number of people on zero-hours or low-hour contracts who would like to increase their hours by region; and the number of people on low-hour contracts by region and differentiated by contract hours. The more data collected, the greater the understanding the Government will have of the issues facing workers in the gig and sharing economies.

The changing nature of work means that it can often be complicated for employers and employees to navigate and to understand their entitlements or responsibilities surrounding new business models. As a first step towards addressing the numerous challenges, the government should ensure there are clearer statutory definitions and that rights and responsibilities are both enhanced and clearly publicised.

Yours sincerely,

Fiona Twycross
LONDONWIDE ASSEMBLY MEMBER